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Supreme Court, U.S.
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Nos. 05-1589 & 05-1657

IN THE

Supreme Court of the United States

DAVENPORT, *et al.*,

Petitioners,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

WASHINGTON,

Petitioner,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF *AMICI CURIAE* EVERGREEN FREEDOM FOUNDATION, CASCADE POLICY INSTITUTE, COMMONWEALTH FOUNDATION FOR PUBLIC POLICY, EXCELLENT EDUCATION FOR EVERYONE, GRASSROOT INSTITUTE OF HAWAII, GEORGIA PUBLIC POLICY FOUNDATION, JAMES MADISON INSTITUTE, JOHN LOCKE FOUNDATION, NEVADA POLICY RESEARCH INSTITUTE, PACIFIC RESEARCH INSTITUTE, PIONEER INSTITUTE FOR PUBLIC POLICY RESEARCH, SMALL BUSINESS HAWAII, AND COMPETITIVE ENTERPRISE INSTITUTE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Is the opt-out procedure approved by the Court in *Chicago Teachers' Union Local 1 v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986), the only method by which a state may protect the First Amendment rights of non-union employees from abuse by unions, or may the state provide additional protections such as Washington's opt-in procedure?

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INTEREST OF *AMICI CURIAE*[1]

The Evergreen Freedom Foundation, founded in 1991, is a non-partisan, public policy research organization with 501(c)(3) status, based in Olympia, Washington. The Foundation's mission is to advance individual liberty, free enterprise, and limited, accountable government. The Foundation's efforts center around core areas of state budget and tax policy, labor policy, welfare reform, education, citizenship and governance issues. To this end, the Foundation has promoted efforts to protect employees, including school teachers, from coerced political speech.

Following the enactment of Wash. Rev. Code §42.17.760 (the Fair Campaign Practices Act), the Foundation monitored the activities of, among others, the WEA to ensure compliance. The Foundation brought to the attention of local prosecutors and the State Attorney General the WEA's ongoing violations of the Act. In 1996, a complaint filed by the Foundation against the WEA resulted in the largest fine for campaign violations in state history. In addition, the Foundation filed the complaint that gave rise to one of these cases.

The Foundation's core mission, along with its history of tracking the activities of the WEA, place the Foundation in a unique position to provide the Court with important and relevant information regarding the nature of the WEA and the opt-in procedure approved by the voters of the State of Washington that is important for a proper understanding of the claims of the parties.

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[1] Pursuant to Supreme Court Rule 37.6, this brief is filed with the written consent of all parties. *Amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made monetary contribution to the preparation of this brief.

The Cascade Policy Institute is a non-profit public policy research organization based in Portland, Oregon. Its mission is to explore and advance public policy alternatives that foster individual liberty, personal responsibility, and economic opportunity.

The Commonwealth Foundation for Public Policy Alternatives is a non-profit, non-partisan, research and educational institute based in Harrisburg, Pennsylvania. Dedicated to advancing the founding principles of limited constitutional government, economic and political freedom, and personal responsibility for one's actions, the Commonwealth Foundation conducts policy analysis and research to improve the lives of all Pennsylvanians.

Excellent Education for Everyone (E3) is a non-profit organization, made up of New Jersey citizens from across the political, racial, religious, ethnic, and regional spectrum dedicated to promoting choice and accountability in the public school system. It was founded in 1999 and works to ensure that all parents, regardless of income, have the power and the resources to decide where and in what way their children are educated.

The Grassroot Institute of Hawaii, founded in 2001, is a non-partisan, public policy research organization with 501(c)(3) status, based in Honolulu, Hawaii. The mission of the Grassroot Institute of Hawaii is to identify "people problems," such as barriers to productivity, wealth creation and personal happiness, and then study, analyze, publish and aggressively pursue creative self-government centered solutions. The individual and his or her search for meaning and happiness in a civil society is stressed. It is thus Grassroot, not Grassroots.

The Georgia Public Policy Foundation is an independent, public policy think tank. Formed in the fall of

1991, the Foundation's members are a diverse group of Georgians that share a common belief that the solutions to most problems lie in a strong private sector, not in a big government bureaucracy. The Foundation is a champion of personal and economic freedom and is committed to providing a free market perspective based on the principles of limited government, respect for the lives and property of others, and responsibility and accountability for one's actions.

The James Madison Institute is a Florida-based research and educational organization engaged in the battle of ideas. The Institute's ideas are rooted in a belief in the U.S. Constitution and such timeless ideals as limited government, economic freedom, federalism, and individual liberty coupled with individual responsibility. The Institute's mission is to keep the citizens of Florida informed about their government and to shape the state's future through the advancement of practical free-market ideas on public policy issues. The Institute achieves its mission through research, conferences and seminars, and a variety of publications.

Founded in 1990, the John Locke Foundation is a non-partisan 501(c)(3) public policy research center based in Raleigh, North Carolina. The John Locke Foundation's mission is to promote solutions to North Carolina's most critical challenges. The John Locke Foundation seeks to transform state and local government through the principles of competition, innovation and individual liberty, which principally requires the repeal or judicial invalidation of laws and regulations that restrict people from engaging in peaceful and voluntary activities or compel them to engage in activities they do not support.

The Nevada Policy Research Institute is a nonprofit organization dedicated to finding free-market solutions to state and local public policy problems. The Institute works to

help the people of Nevada appreciate the fundamental requirements of a free society. NPRI also directly provides the state's elected officials, Institute members, business leaders and journalists with independent research on matters essential to freedom. Priority goals include better schools, low taxes and an entrepreneur-friendly business climate for Nevada.

The Pacific Research Institute (PRI), located in San Francisco, California, is a non-partisan, non-profit, 501(c)(3) organization which was founded in 1979. PRI champions freedom, opportunity, and personal responsibility for all individuals by advancing free-market policy solutions. It demonstrates why the free market is more effective than government at providing the important results we all seek — good schools, quality health care, a clean environment, economic growth, and technological innovation. PRI puts "ideas into action" by informing the media, lawmakers, opinion leaders, and the public.

The Pioneer Institute for Public Policy Research is an independent, non-profit organization specializing in the support, distribution, and promotion of research on market oriented approaches to Massachusetts public policy issues.

Small Business Hawaii is a 501(c)(6) non-profit association and is dedicated to promoting a better Hawaii through private, competitive and networked small businesses. SBH aims to foster job creation, reduce taxes, government regulations, and business costs, while promoting, educating, and effectively fighting for Hawaii's small business community.

The Competitive Enterprise Institute (CEI) is a nonprofit organization founded in 1984 for the purpose of advancing free market solutions to regulatory issues.

SUMMARY OF ARGUMENT

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical." – Thomas Jefferson.[2]

1. The WEA is much more than an organization of collective bargaining units representing teachers. It is also one of the largest political spenders in the State of Washington. The fact that the WEA and other organizations used funds collected from their members (and in the case of the WEA from non-members) led directly to the adoption of the employee protections of Wash. Rev. Code §42.17.760. Enforcement of Wash. Rev. Code §42.17.760 will protect the First Amendment rights of employees without restricting the ability of the WEA to participate in elections.

2. Far from being an "insurmountable hurdle," the opt-in requirement of Wash. Rev. Code §42.17.760 can be easily implemented with a minor change to the existing *Hudson* opt-out process and will have only a minimal impact on the WEA's ability to collect truly voluntary contributions for political use.

3. The Court should not adopt the WEA's argument that consent by nonmembers to expenditures can be presumed, as history demonstrates that even members of the WEA, when given the option, choose not to support the political activities of the WEA.

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[2] THE JEFFERSONIAN CYCLOPEDIA, 2267 (John P. Foley, ed. Russell & Russell, 1967).

ARGUMENT

I. The WEA is an Overtly Political Organization

A. The WEA is One of the Largest Campaign Spenders in the State of Washington

While the WEA attempts to paint itself as a labor organization that engages in some minor incidental political spending, the facts demonstrate otherwise. The WEA is one of the top political spenders in the State of Washington, regularly contributing hundreds of thousands of dollars to candidates and ballot issues. This political power and its obvious potential for abuse is a natural subject for regulation by the people of the State of Washington. And despite the dire predictions of the WEA, the enactment of Wash. Rev. Code §42.17.760, if enforced, will not unduly restrict WEA's ability to spend political funds collected voluntarily from members. At the same time, it provides additional protections for the First Amendment rights of employees not to associate with political viewpoints with which they may disagree.

1. The WEA's History of Political Influence

Chapter 42.17 of the Revised Code of Washington, the chapter in which the challenged statute is codified, is a comprehensive set of statutes regulating elections and providing for governmental accountability. Among other regulations, that chapter requires that entities spending money on behalf of candidates or political positions register and disclose their expenditures. The Foundation has analyzed these reports, all publicly available at www.pdc.wa.gov, and determined that the WEA is one of the most prolific spenders in Washington State politics.

Since 1996, the WEA has ranked among the top five contributors to executive office campaigns in the State of

Washington.[3] During that time, the WEA also ranked among the top 50 contributors to state legislative campaigns and was one of the top twenty-one contributors of "soft money" to the Washington State Democratic Party.[4] The WEA Political Action Committee (WEA-PAC) was the most active political action committee spender in every election from 1996 through 2002, with the exception of 1998, where it was the second most active PAC – not because it reduced spending, but because its spending was eclipsed by another union group.[5]

The WEA's influence is not limited to candidate elections. From 2000 through 2005, the WEA and its PAC reported spending over $1.6 million for or against various initiatives and referenda.[6] As of October 23, 2006, the WEA had spent over $455,000 opposing two ballot measures on the November 2006 ballot.[7]

Altogether, including direct cash donations and in-kind contributions, between 2000 and 2005, the WEA and its PAC reported spending nearly $4 million to influence elections in Washington State.[8] During the 2006 campaign cycle, the WEA and its PAC spent over $1.1 million.[9]

In addition to direct spending, the WEA exerts its influence through paid lobbyists. In fact, with the exception of 2004-05, in every year since 2001, one of WEA's lobbyists was among the top four lobbyist spenders in the

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[3] Washington State Public Disclosure Commission, *PDC Election Financing Fact Book*, available at www.pdc.wa.gov/home/historical/publications/Factbooks.aspx.

[4] Id.

[5] www.pdc.wa.gov.

[6] Id.

[7] Id.

[8] Id.

[9] Id. as of October 23, 2006.

state.[10] Since 2001, WEA lobbyists have reported spending a total well exceeding $4 million.[11]

2. Wash. Rev. Code §42.17.760 was Enacted to Protect Employee Association Rights Regardless of Viewpoint

The WEA consistently argues that Wash. Rev. Code imposes a viewpoint-based restriction on political speech. The State and other *amici* will adequately address these erroneous contentions, However, due to its long-term involvement in monitoring compliance with Wash. Rev. Code §42.17.760, the Foundation has a unique understanding of the motivation and purposes of that measure.

In 1992, the voters of the State of Washington were alarmed by the skyrocketing increases in political spending, which, in the previous election cycle, had reached an all-time high.[12] Even more alarming was the fact that just 20% of campaign contributions came from individuals. Political action committees, corporations, labor unions, and special interest groups were dominating the most fundamental political process.[13] The people of the state were concerned by the lack of accountability of large donors and the disparity in power between individuals and entities permitted to make large campaign donations.[14]

In order to address these concerns, voters of the State of Washington enacted Initiative 134, the Fair Campaign Practices Act. The act included specific findings that the financial strength of organizations should not permit them to exercise a disproportionate or controlling influence on

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[10] Id.
[11] Id.
[12] Washington Secretary of State, *Voter's Pamphlet, General Election 1992.*
[13] Id.
[14] Id.

elections.[15] It further found that the rapid increase in donations from organizations created a public perception that individuals had an insignificant role in elections while large donor organizations improperly influenced public officials.[16] The Initiative provided for maximum contribution limits from corporations and other organizations, implemented restrictions on political fundraising and spending, and required additional reporting. Among the new provisions was the mandatory opt-in procedure, at issue here. The intent of that provision, which was codified as Wash. Rev. Code §42.17.760, was to protect the First Amendment associational rights of employees and other individuals.[17]

The initiative had tremendous public support, resulting in approval by over 72% of the state's electorate. While most entities regulated by the Fair Campaign Practices Act readily conformed to the new regulations, a few entities, most notably the WEA, demonstrated consistent resistance:

- In 1996, the WEA was charged with three violations of Wash. Rev. Code §42.17. First, the WEA and WEA-PAC failed to properly disclose a $162,255 donation from the WEA to WEA-PAC; second, WEA and WEA-PAC failed to disclose $170,000 contributions from WEA to WEA-PAC; and third, WEA formed a second political action committee, the Community Outreach Program, which did not file as a political committee. The State of Washington brought suit against the WEA, ultimately agreeing to a $430,000 settlement: $330,000 was refunded to members, $80,000 was paid as a penalty, and $20,000 was paid in costs and attorneys'

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[15] Wash. Rev. Code §42.17.610-620.

[16] Id.

[17] See http://tpp.effwa.org/opeds/20.php, quoting the 1992 voter's guide.

fees.[18] Richard Heath, senior assistant attorney general, said it was the largest penalty assessed for campaign violations in the history of the state.[19]

- In 1997, a WEA lobbyist was cited for violations of Wash. Rev. Code §42.17.150, 42.17.155, and 42.17.170 for twenty-three monthly reporting violations, for falsely reporting her employer as the WEA, and for failing to timely report four political contributions.

- Also in 1997, the WEA Executive Director was cited for violations of Wash. Rev. Code §§42.17.150, .155, and .170 for 108 false monthly reports, and sixty reporting violations for falsely reporting his employer as the WEA. He was fined $6,000 with $2,000 suspended.

- In late 1997, the WEA and NEA were charged with concealing the source of political contributions by funneling $410,000 through WEA.

- In 1999, the WEA was fined $15,000 for failing to disclose, as part of discovery in a lawsuit, the union's political plan for the 1996 elections.

- In 2004, three WEA local building representatives were fined for using public facilities to promote a statewide ballot measure in violation of Wash. Rev. Code § 42.17.130.

The purpose of Initiative 134 was to promote fairness and openness in Washington's election process. It enacted

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[18] *AG announces settlement in WEA campaign finance suit.* Attorney General's Office (February 27, 1998). *Available at* http://www.atg.wa.gov/releases/rel_wea_022798.html.

[19] *Union settles campaign finance suit; WEA to pay $430,000 in agreement with state*, Seattle P-I. February 28, 1998, at A1. *Available at* http://seattlepi.nwsource.com/archives/1998/9803010079.asp.

generally applicable regulations that do not burden any particular viewpoint. Among those regulations is a simple requirement that non-union members cannot be forced to support financially and thus associate with the political viewpoints of a union without their express consent. While most regulated entities have found no difficulty in both continuing their political activities and adhering to the law, the WEA refuses to comply.

B. Enforcement of the Statute Protects Individual Rights Without Unduly Restricting the WEA's Ability to Spend Money in Political Campaigns

Amici support the rights of individuals and organizations to participate in the political process and do not advocate any rule that would prevent that participation so long as it is funded by truly voluntary contributions. While the WEA implies that prohibiting use of non-member dues for political purposes would have a devastating effect on the WEA's right to political speech, the facts belie this claim. Based on the WEA's submissions to the court below, the limitations of Wash. Rev. Code §42.17.760 will uphold the individual rights of teachers and not burden the union's ability to advocate on behalf of informed teachers who voluntarily contribute to its political efforts.

The provision at issue prohibits collection of money to be used for political purposes only from non-union members who have not given permission for such use. The fees from union members are not at issue, and the union can still collect from non-members with the non-members' consent. The WEA has approximately 70,000 members and fewer than 3,500 non-member fee payers.[20] Even if every non-member declined to opt-in to the use of dues for political purposes,

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[20] Trial Exhibits ("Ex.") 57-61; Report of Proceedings ("RP") 178-80; Clerk's Papers ("CP") 105.

the impact to the WEA would amount to less than $\frac{1}{4}$ of 1% of the WEA's total expenditures.[21]

For the 2004-05 school year, WEA dues were $318.[22] Of that, 27%, or $85.86, went towards all "non-chargeable" purposes.[23] Assuming that not one of the 5% of non-member employees would opt-in to the non-chargeable expenses, the total loss of revenue to the WEA would be only 27% of the 5% of total dues collected from non-members – a net of 1.35% of dues. In fact, because the WEA "collects significant revenues from other sources,"[24] and because the amount spent on political activities represents less than 5% of the WEA's total expenditures,[25] the actual percentage of revenue collected from non-union members and used for political purposes is actually much smaller. Such a miniscule drop in funds available for political purposes hardly has the crippling effect complained of by the WEA and is a small price to pay to protect teachers from forced support of political speech with which they disagree.

II. An Opt-In Procedure Does Not Present an "Insurmountable Hurdle"

The WEA repeatedly argues that implementation of an opt-in procedure for non-members presents an "insurmountable" administrative burden. The truth is otherwise. The requirements of the Fair Campaign Practices Act can readily be implemented by adapting the existing

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[21] Opening Brief of Appellant, Washington Education Association, Washington State Court of Appeals, No. 28264-0-II.

[22] In addition, dues of $137 were charged for membership in the National Education Association and additional dues were charged for membership in local and regional dues. See letter, appendix A.

[23] See letter, appendix A. That percentage is similar to previous years. CP 175.

[24] Ex. 156. See also, Opening Brief of Appellant to Washington State Court of Appeals, No. 28264-0-II.

[25] Id.

Hudson packet procedure. In fact, a recent study demonstrates that it is easier for employees to opt-in than it is for them to opt-out.[26] The study also found that an opt-in plan increases union communication with employees and ensures all contributions are voluntary. *Id.*

Currently the WEA sends an annual *Hudson* packet (after *Chicago Teacher's Union Local 1 v. Hudson*, 475 U.S. 292 (1986)) to every non-member.[27] That packet is designed to meet the minimum requirements set forth in *Hudson* and contains information about union membership, activities, and benefits, and explains the procedures required for employees to opt-out of union membership.[28] The Fair Campaign Practices Act could be readily satisfied by including a simple form allowing non-members to indicate their desire to have their fees used for the political purposes of the WEA. Something as simple as a postcard with a box to check would meet the minimal protections required by the Act. Any protestation that the "burden" imposed by the Act is "insurmountable" defies common sense.

III. Given the Choice, Employees Choose Not to Contribute Their Pay to the WEA's Political Purposes

The WEA argues that the Court should presume that nonmembers who do not stand up and object actually consent to the use of their dues for political purposes. But experience shows that silence does not mean consent. Perhaps the most important point the Court should consider in this regard is

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[26] Lance T. Izumi, *Giving a Voice to Workers Why California Needs Paycheck Protection*, Pacific Research Institute, October 2005, *available at*: www.pacificresearch.org/pub/sab/entrep/2005/PaycheckProtect.pdf.

[27] A typical *Hudson* letter is attached as appendix A.

[28] Notably, the union deems it unnecessary to include a simple opt-out form or a pre-addressed envelope, having determined to impose the "administrative burden" on the employees.

that when given the option to donate to the political purposes of the WEA, even union members elect not to donate.

The enactment of the Fair Campaign Practices Act forced the WEA to stop requiring a member donation to the WEA-PAC unless the union first received affirmative consent to the donation from the member. Prior to the enactment of the law, approximately 82% of the WEA membership donated to the WEA-PAC and only 18% affirmatively opted out. Opting out required an affirmative action by the union member, causing that member to "stand out" from his or her colleagues, potentially bringing unwanted attention and pressures to the member.[29] However, after removing the pressures imposed by the opt-out system, member participation in the WEA-PAC dropped to between 11% and 18%.[30] Such results are not unique to Washington. After enacting similar laws, member participation in PACs in Utah fell from 68% to 7%,[31] and participation in Idaho fell by 75%.[32] When informed of their right to opt-out of union political contributions, the number of members opting out in Colorado increased four-fold.[33] Thus even those who elected to become union members, who can reasonably be presumed to share many of the WEA's political views (at least more so than those who opted not to join), when given a choice free of the coercion and exposure endemic to the opt-out system, chose not to support the political activities of the WEA.

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[29] See *amicus* brief of Association of American Educators.

[30] See http://tpp.effwa.org/opeds/20.php.

[31] See http://www.capitalresearch.org/pubs/pdf/LW0106.pdf. The drop in Utah and Idaho is even more significant as these are right to work states and do not mandate payment of union fees.

[32] See http://www.capitalresearch.org/pubs/pdf/LW0106.pdf, noting that in 2004, the Independence Institute, a Colorado-based free market think tank began informing Colorado teachers union members of their right to opt-out of the expressly political union dues. The number of teachers choosing to opt-out increased more than fourfold after the first year of these efforts.

[33] See http://www.teachers-vs-union.org/WA_v_WEA_Amicus_brief.pdf.

While the WEA chants the mantra of "dissent cannot be implied," the Court should not presume that those who affirmatively chose not to become union members assent to the WEA's political activities when those who are members overwhelmingly decline to contribute to the political activities of that organization.

CONCLUSION

The people of the State of Washington determined that employees needed additional protection from the use of their hard earned pay for political purposes with which they might not agree. They enacted a law by an overwhelming margin, codifying what seems to be a simple premise: If an organization wants to use an employee's money for political purposes, it must have that employee's permission. While the great majority of organizations affected by this law have fallen into line and have remained fully active in the political process, the WEA refused to comply. Perhaps because it cannot muster the support of more than 20% of its own members for its political activities, the WEA instead raises the specter of repressed speech and administrative burdens. The Court should reject these unfounded fears and respect the will of the voters of Washington by reversing the Supreme Court of the State of Washington and holding Washington's opt-in procedure constitutional.

Respectfully submitted,

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November 8, 2006

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APPENDIX

APPENDIX — LETTER FROM ARMAND L. TIBERIO, EXECUTIVE DIRECTOR OF THE WASHINGTON EDUCATION ASSOCIATION TO CERTIFICATED AND AHE AGENCY FEE PAYERS DATED OCTOBER 8, 2004

WEA
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Charles Hasse, President
David Scott, Vice President
Armand L. Tiberio, Executive Director

TO: **Certificated and AHE Agency Fee Payers**

FROM: **Armand L. Tiberio, Executive Director**

DATE: **October 8, 2004**

RE: **2004/05 AGENCY FEE**

The records of the Washington Education Association (WEA) indicate that you are not currently a member of the WEA, which also means that you are not a member of the National

Appendix

Education Association (NEA) or your Local Education Association (LEA) and affiliated UniServ Council. As a nonmember, you pay an agency fee to the associations to help defray the expense of providing collective bargaining services that benefit association members and nonmembers alike. You have certain legal rights as a nonmember, and one of the purposes of this letter is to inform you of those rights.

But rather than paying agency fees as a nonmember, we urge you to consider joining the more than 75,000 of your fellow educators and school employees who have become members of WEA and its affiliates, and who participate fully in the associations' activities. You can become a member of the NEA, WEA, and your affiliated UniServ Council and LEA by completing the enclosed WEA Membership Enrollment Form and returning the same to the WEA, Attn. Membership Services, P.O. Box 9100, Federal Way, Washington, 98063-9100.

There are certain services available to members that you will not receive as an agency fee payer or non-member. One of these is the Educators Employment Liability Insurance Policy. This policy provides up to $1,000,000 insurance if a member is sued on the basis of employment related activities. Under certain circumstances, it also provides up to $35,000 to pay attorney's fees if a member is charged with a crime related to employment. Additionally, WEA members receive a discount on personal legal services, such as wills, probate, domestic relations, and real estate matters; agency fee payers do not receive this discount. Moreover, pursuant to the terms of the WEA Legal Defense Policy, WEA may provide an attorney to defend its members when their employer seeks to discharge

or non-renew or takes other action adverse to the member's contractual rights; agency fee payers are not eligible for legal services.

WEA members are eligible to participate in Association trainings concerning a wide range of issues affecting the employment rights, benefits and compensation of public education employees. One such training is the annual WEA Leadership Academy which provides instruction on issues ranging from member advocacy and mediation/grievance skills to classroom management and instructional issues. Association members may vote on contract ratifications, may vote in internal union elections to select Association leaders and may help shape the policy and direction that the Association takes on your behalf. Only Association members are eligible to hold elected Association offices and positions, to serve as building representatives, or to serve on joint Association-Employer committees. In addition, only WEA members are eligible for a wide range of member benefits provided through the NEA, such as discount buying, credit cards, etc.

State statutes, RCW 41.59.100 (certificated) and RCW 28B.52.045 (AHE) allow your Local Education Association, an affiliate of the WEA and the NEA, to negotiate an agency fee provision in a collective bargaining agreement. This law states that the school or college district shall deduct (and forward to the education association) from the salary of those who choose not to become Association members an agency fee equal to the amount of dues paid by Association members.

Appendix

WEA membership dues for the 2004/05 school year are $318.00, plus $12.00 dues for political education and a $12.00 special assessment to explore legal action against the state to require it to fully fund public education. Agency fee payers, however, do not pay the $12.00 dues devoted to political education, or the $12.00 special assessment. WEA members may choose to pay, in addition to WEA dues, $20.00 per year for contribution to the WEA Political Action Committee, WEA-PAC. These monies are used for state and local elections, supporting candidates. No agency fees go to WEA-PAC. As an agency fee payer, the WEA-PAC contribution will not be deducted from your paycheck and you will not be asked to contribute to WEA-PAC.

WEA members pay dues to WEA, a Local Education Association, a UniServ Council, and the National Education Association (NEA). This is because in our experience, the multi-level structure best enables the Association to provide representational services most efficiently without overlapping.

In addition to the WEA agency fee, you will also be required to pay an agency fee to the NEA, and, if they choose to collect one, to your LEA and UniServ Council. The amount of Local dues can be found by referring to **Appendix A***, which lists locals in alphabetical order. The amount of UniServ Council dues can be found by referring to **Appendix B**, which lists councils in alphabetical order.

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* Appendix A is the 2003-04 local dues data, the most current available at time of printing.. You should contact your local association to determine whether the local dues rate has changed for 2004-05.

Appendix

NEA membership dues for the 2004/05 school year are $137.00; no dues go to the NEA-Fund for Children in Public Education (NEA-FCPE). NEA members may choose to pay, in addition to dues, $12.00 per year as a contribution to the political fund, NEA-FCPE. These monies are used to contribute to federal political campaigns for pro-education candidates. No agency fees are directed to NEA-FCPE; as an agency fee payer, the NEA-FCPE contribution will not be deducted from your paycheck and you will not be asked to contribute to NEA-FCPE.

The agency fee pays for many important services of benefit to you; the following is a partial list of such services.

1. The Association represents you in your employment in relationship with your employer.

2. Association staff or leaders bargain a collective bargaining agreement on behalf of all members of your bargaining unit that controls your wages, hours and other terms and conditions of employment.

3. Should your employer violate the collective bargaining agreement in its treatment of you, the Association can file a grievance on your behalf.

4. If you are called in for a disciplinary interview with your supervisor or other administrator, you may request Association representation during the interview.

5. WEA negotiates with insurance companies, such as Blue Cross/Blue Shield, so that such companies will design

insurance packages to meet the unique needs of school employees, and so that such packages will be marketed to school districts at the lowest possible price.

6. WEA sponsors many courses and workshops to train local leaders to protect the rights of members and agency fee payers.

This is not an exhaustive list of services you receive from WEA, your Local Association, your UniServ Council and NEA.

If you as an agency fee payer object to the Association spending any part of your agency fee on political or ideological activities not related to collective bargaining or contract administration and enforcement, or on services which agency fee payers do not receive, you will *not* be charged for these activities and services. You will, however, *be* charged for expenditures for activities related to bargaining, contract administration and enforcement, and improving your working conditions. A list of items we view as chargeable and nonchargeable is set forth in **Appendix C**.

In the past, WEA has expended money on pro-public education ballot propositions, including school levies, bonds and initiatives, such as those to reduce class size and increase school employees' salaries. These expenditures are non-chargeable.

If you decide not to become a member of the Association, you have three options as a nonmember: (1) you may pay the full amount equal to dues paid by members; (2) you may

object to use of your agency fee for nonchargeable activities but accept the Association's determination of the amount of the fee that is chargeable as is set forth in this letter; or (3) you may choose to object to the use of your agency fee for nonchargeable activities and challenge the Association's calculation of the amounts that are chargeable and nonchargeable, and/or our characterization of items as chargeable or nonchargeable, before an impartial arbitrator. If you choose option (2) or (3), you will receive a rebate check equal to the amount of the fee that the Association has determined to be non-chargeable. If you choose option (3), the Association bears the burden of proving to the arbitrator that any particular expenditure was chargeable to agency fee payers, which may result in the arbitrator awarding a different amount to be rebated.

You may object by notifying Armand L. Tiberio in writing at the following address:

Armand L. Tiberio, Executive Director
Washington Education Association
P.O. Box 9100
Federal Way, Washington 98063-9100

The objection must contain the following information:

1. Your name, home address, school and home telephone numbers.

2. The type of position in which you are employed (i.e., community college faculty, K-12 teacher, etc.).

Appendix

3. Whether you are employed part time, full time, or as a substitute.

4. The name of the school district or college by which you are employed and the name of the WEA affiliate which is the collective bargaining representative for the bargaining unit in question.

5. If you wish to challenge the Association's calculation of the amounts that are chargeable and nonchargeable, or our characterization of items as chargeable or nonchargeable, your objection letter must state that you wish to "*challenge*".

If such written objection has not been postmarked by **Thursday, November 11, 2004** you will waive your ability to object.

Only a single general statement of objection and/or challenge is necessary each year to object to and/or challenge the WEA agency fee, the NEA agency fee, the LEA agency fee, and the UniServ Council agency fee.

In considering whether you wish to object to the amount of the fee, please examine the following documents:

1. **Appendix D**. The description of the WEA expenditure budget for the 2002/03 fiscal year.

2. **Appendix E**. WEA chargeable and nonchargeable expenditures by budget area for 2002/03.

Appendix

3. **Appendix F**. The audited statement of WEA expenses in the 2002/03 fiscal year, which includes the auditor's review of the chargeable/nonchargeable calculations.

4. **Appendix G**. How WEA calculates its agency fee.

5. **Appendix H** (if applicable). If your UniServ Council is seeking to collect an agency fee: 1) A declaration from an officer or staff member of the Council, explaining the operation of the Council and its financial records, and incorporating the Council's 2002/03 year-end financial statements, including its breakdown of expenditures into chargeable and nonchargeable categories, and; 2) an independent audit of the Council's 2002/03 expenditures.

6. **Appendix I** (if applicable). If your Local Association is seeking to collect an agency fee, enclosed are: 1) a declaration from an officer of your Local Association, incorporating and explaining its 2002/03 financial and time keeping records, including its breakdown of expenditures into chargeable and nonchargeable categories; 2) If your Local has more than 750 members, an independent audit of the Local's 2002/03 expenditures; 3) if your Local has less than 750 members, but more than 200 members, a independent compilation report for the Local's 2002/03 expenditures; and 4) if your Local has 200 or fewer members, either a compilation report for the Local's 2002/03 expenditures, or if no compilation report, then you may request the opportunity to inspect your Local's 2002/03 financial records by contacting the Local President prior to Thursday, November 11, 2004.

Appendix

7. **Appendix J.** NEA cover memorandum.

8. **Appendix J-1.** NEA chargeable and nonchargeable audited expenditures for the 2002/03 fiscal year.

9. **Appendix J-2.** The audited NEA financial statement as of August 31, 2002 and 2003. This is an independent auditor's statement of expenditures made by the NEA.

If your local association is seeking to collect an agency fee, the percentage of local dues that an objector will pay differs depending on whether the association has more or less than 850 members. If your local association has *more* than 850 members, an objector will pay the actual percentage of local dues identified as "chargeable" in the enclosed local association declaration. If it has *less* than 850 members, an objector will pay WEA's chargeable percentage of local association dues as an agency fee, or the actual percent of local dues identified as chargeable in the enclosed local association declaration, whichever is less, unless that local association had an audit done of its 2002/03 expenditures. If an audit was performed (in which case the audit report is enclosed), an objector will pay the actual percentage of local dues identified as "chargeable" in the enclosed local association declaration.

The agency fee charged by the UniServ Council is the percentage of dues identified as chargeable in the enclosed council declaration.

For 2004/05, the agency fee charged by WEA is 73% of dues. For 2004/05, the agency fee charged by NEA is of 54% dues.

Appendix

In March of 1994, WEA presented evidence to an arbitrator to justify the application of WEA's chargeable percent to its councils and locals. At the arbitration, WEA presented evidence of the expenses of a number of local associations. The arbitrator ruled that WEA could use WEA's chargeable percent to calculate the chargeable fee of those locals because:

> *The evidence at the hearing made it clear that the Locals . . . , because of their basic mission, must spend at least as much time, if not more, on representational issues. The staff and elected officers of these organizations must spend their time meeting with employer representatives to discuss issues of employee concern. They also spend a great deal of time meeting with individual employees with accusation, complaint, or grievance. And, as stated, they spend virtually no time in the most significant non-chargeable areas; being political action and public relations. I agree with the Associations (keeping in mind the Hudson admonishment that "absolute precision" is not required) that the local presumption option, which has been endorsed by some courts, is a valid alternative.*

Accordingly, that arbitrator ruled that each of the locals could use WEA's chargeable percent. Four other arbitrators have also permitted the Association to use WEA's chargeable percent to estimate the locals' agency fee in this notice. In addition, use of WEA's chargeable percentage to estimate the agency fees for objectors in locals with fewer than 850 members was approved in 1998 by the U.S. District Court (W.D. Wash) as part of a settlement of a class action lawsuit.

Appendix

If you have a genuine, religious belief that prevents you from paying a representation fee to the WEA, NEA and its affiliates, you must send written notification to the following address:

Armand L. Tiberio, Executive Director
Washington Education Association
P.O. Box 9100
Federal Way, Washington 98063-9100

Your written notification must specify the nature of your genuine, religious belief that prevents you from paying representation fees to the Association and must specify the non-religious charitable organization to which you would like the amount equivalent to fees to be paid. Your Local Education Association will then decide whether or not to grant your request for religious objector status, and if granted, will contact you to determine a mutually agreeable non-religious charitable organization to which an amount equal to your full 2004/05 membership dues will be paid.

Please examine the enclosed material and reflect for a moment on the services that the Association provides agency fee payers. I am confident that if you do so, you will agree that the Association delivers services worth the full amount of Association dues.

Enclosures
g:\mgawley\agency fee\2004-05\hudson packet